

M. R. DIGGS, JR.

IBLA 72-364

Decided July 16, 1973

Appeal from a Colorado State Office, Bureau of Land Management, decision rejecting noncompetitive oil and gas lease offer C 15689 Acq. for land within the jurisdiction of the Department of Agriculture.

Set aside and remanded.

Mineral Leasing Act for Acquired Lands: Consent of Agency -- Oil and Gas Leases: Consent of Agency -
- Oil and Gas Leases: Acquired Lands Leases

Where an oil and gas lease offer is rejected because the subject acquired land is included within an agricultural research area, but the acquiring agency subsequently consents to issuance of the lease subject to a stipulation forbidding surface occupancy of the land by the lessee, as requested by the offeror, the case will be remanded for issuance of the lease with the inclusion of the stipulation, all else being regular.

APPEARANCES: M. R. Diggs, Jr. pro se.

OPINION BY MR. STUEBING

This is an appeal by M. R. Diggs, Jr., from a March 15, 1972, decision of the Colorado State Office which rejected his noncompetitive offer to lease certain acquired lands for oil and gas. 1/ Rejection was based on the State Office's finding that:

The land described in the offer is under the jurisdiction of the Department of Agriculture and has been assigned to the Agricultural Research Service for the sole purpose of conducting research on soil and water

1/ T. 2 N., R. 52 W., 6th P.M., section 12: That portion of the southeast quarter lying north of the railroad right of way.

problems. Oil and gas exploration activities would not be compatible with the purpose for which the land was acquired.

Diggs, in his statement of reasons, wrote that he would be willing to have the land included in a unit and develop it without the necessity of entering upon the land in "any way, shape or form", and so overcome the basis of any probable objection to his development.

Accordingly, on January 26, 1973, we wrote to the Agricultural Research Service to inquire whether the incorporation of a stipulation in the lease prohibiting exploration or production activities on the surface would allay their objection. On April 25, 1973, the Real Property Officer responded, stating that the A.R.S. would not object to inclusion of the land in a leasing unit, subject to the following stipulation:

No surface occupancy of this land will be permitted for the purpose of gas or oil exploration or production activities. Any directional or slant drilling must be accomplished without endangering or damaging the land surface or research being conducted on the land.

With the inclusion of the Agricultural Research Service's stipulation, the lease may be issued, all else being regular.

Accordingly, pursuant to the authority delegated the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1 the decision appealed from is set aside and the case is remanded for further action consistent with this opinion.

Edward W. Stuebing, Member

We concur:

Newton Frishberg, Chairman

Joan B. Thompson, Member

